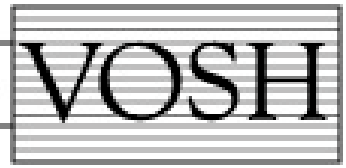


Virginia Occupational Safety and Health



VOSH PROGRAM DIRECTIVE: 02-053B

ISSUED: September 1, 1994

SUBJECT: Procedures for Photographic Negatives, Audiotapes and Videotapes Taken During Inspection or Investigation

A. Purpose.

This directive revises guidelines/procedures for VOSH case file documentation to include specific provisions for photographic negatives, videotapes and audiotapes.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies to all VOSH personnel.

C. References.

OSHA Instruction CPL 2.98 (Oct. 12, 1993).

D. Cancellation.

VOSH Program Directive 02-053A (Jan. 1, 1992).

E. Action.

Directors and Supervisors shall ensure that the guidelines, policies and procedures set forth in this instruction are complied with by VOSH Personnel.

F. Effective Date

August 1, 1994.

G. Expiration Date.

Not Applicable.

H. Policy.

1. VOSH encourages the use of photographs, videotaping and audiotaping as methods of documenting violations whenever they add to the quality and gathering of the evidence for inspection case files. Significant benefits have been identified because of their use. Certain types of inspections, such as fatalities, imminent dangers, ergonomic and programmed, should always include videotaping.
2. All negatives of photographed conditions and all videotaped conditions on construction and industrial sites are to become a part of the original case file.
3. For significant case review or other review, photo negatives and videotape are to accompany the original photos to the regional or central office.
4. During inspections, such as those involving ergonomic hazards, videotaping work as it is performed provides the best documentary evidence of the dynamics and stressors of each job. In most inspection situations, videotaping provides a convenient method of capturing visual information about particular violations, be they static or dynamic. The videotaping process also records sound, which makes it a suitable way of noting information that would otherwise have to be reduced to writing on-the-spot.
5. Other methods of documentation, such as handwritten notes, audiotapings, and photographs, continue to be acceptable and are encouraged regardless of whether videotape equipment is available.
6. The CSHO shall not videotape, photograph or audiotape in security clearance areas unless the CSHO is specifically authorized to videotape, photograph or audiotape. (See VOSH FOM).
7. The CSHO shall mention during the opening conference that a videocamera and/or an audio recorder will be used to provide a visual and/or audio record, and that the videotape and the audiotape will be used in the same manner as handwritten notes and photographs are, and have been, in VOSH investigations. The CSHO shall also advise the walkaround representatives that the videocamera also records voice.

NOTE: If the employer is hesitant about permitting taping, the CSHO must determine, in accordance with procedures in the FOM, whether the employer is refusing to permit the inspection, and follow the FOM procedures accordingly.

8. If use of the videocamera is essential, and an employer refuses to allow videotaping during an inspection, the CSHO shall treat it as a refusal of entry and shall follow the appropriate procedures in the FOM.

9. If a CSHO begins an inspection and then discovers that the videocamera is not working, the CSHO will continue with the inspection following standard inspection procedures. If the videocamera is essential for the inspection (e.g., ergonomic inspections), the CSHO will either ensure that a backup videocamera is available or reschedule the part of the inspection that requires videotaping.
10. When citing hazards observed during review of the videotape that were not discussed during the inspection or at the site closing conference, the CSHO shall advise the employer and the employee representative of the apparent violations and the applicable standard sections, and may discuss suggested correction procedures and interim methods of control (either in person or by telephone). This shall take place during a second closing conference in the same manner as that of sampling result notification. (See the FOM).

I. Procedures.

The following taping procedures shall be observed:

1. When taping, the CSHO shall ensure the safety of personnel in the area by the proper use of the videocamera and accessories taking into consideration the following:
 - a. Since current videocameras and audio recorders are not rated as intrinsically safe, they shall not be used in hazardous atmospheres.
 - b. Cables and cords, if used, shall be deployed so as not to present a tripping hazard.
 - c. Walkways and work areas shall be kept clear of unnecessary equipment, and all equipment shall be properly secured when working on overhead platforms or walkways to avoid dropping accessories on those below.
2. Basic techniques that apply when taping include:
 - a. Videotapes and audiotapes shall normally not be reused until the case file itself can be destroyed following its 3 year retention period. See section L.3. of this directive regarding reuse.

NOTE: A single videotape may be used for more than one inspection, but only if the case files of all of the inspections on the videotape have the same retention period.
 - b. The video lens can be covered to record on audio the employer's name, establishment location, exposure information, and instance description.
 - c. The date/time feature of the videocamera shall always be checked immediately before the opening conference to see that it is correct and to assure that it is superimposed on the videotape when recording.

- d. Do not "stage" employee exposure to hazards (do not re-enact). Only actual employee exposures should be videotaped. Demonstrations, which do not endanger the participants, may be taped as necessary to illustrate procedures or practices. Demonstrations shall be identified as such on the videotape.
- e. When videotaping, pan the area slowly, then close in on the operation; include a position of reference (labeled aisle, beam, door, etc.). Take a 5-to-10 second exposure shot, focusing on the hazard/employee exposed, then continue narrating information detailing employee exposure into the camera with or without the video lens covered.

NOTE: This in no way is to be construed as a limitation on video use in ergonomic inspections.

- f. A notation shall be made on the appropriate OSHA-1Bs or 1BIHs showing where on the videotape the information associated with each violation is to be found. This usually can be done by using the time of day that is superimposed on the videotape as a position counter. A less accurate method is to log by position on the tape machine counter.
 - g. After a videotape has been shot, there shall be no dubbing-in of the voice narration on the original tape since this could be considered "editing" and have legal consequences. Appropriate factual voice narration may, however, accompany the video or be added at the end of the videotape as long as it is clear on the videotape when the additions were made. VHS copies of the original maybe edited for informational purposes.
 - h. A label checklist with prompts for required OSHA-1B and 1BIH information may be placed on the videocamera as a reminder. (See Appendix A for a sample of a label checklist.)
3. For specific inspection concerns regarding specific job operations/exposures, the following applies:
- a. When sampling for health violations, such as noise and air contaminants, it is recommended that the CSHO videotape employees with sampling equipment and sources of exposure, film the sources of exposure, and pan the local area slowly for location of ventilation systems or other control measures. If the inspection is a health referral, the CSHO should identify as much of the areas/operations and contaminants as possible.
 - b. When videotaping construction violations, it is recommended that the CSHO film any apparent violations noted from public areas before entry onto the site. Panning the area may be useful to show multi-employer exposures before the employees disperse.
 - c. When videotaping program violations such as lockout/tagout and hazard communication, it is recommended that the CSHO film whenever possible the specific operations/exposures related to the program that show lack of compliance (lack of labels,

employer admitting having no Material Safety Data Sheets, employer describing violative lockout/tagout or confined space procedures, filming violative lockout/tagout procedures, employees saying they have not seen their exposure or medical records).

4. When recording employees, the CSHO shall abide by the following:
 - a. A specific notification of voice recordings shall be given to those employees within the audio range of the videocamera. Examples of a specific notification would be: "I will be videotaping your work and also taping what you say." or "While the red light on the videocamera is blinking, both the sound and picture are being recorded."
 - b. Interview statements may be videotaped or audiotaped, with the consent of the person being interviewed. The statement shall be reduced to writing in egregious, fatality/catastrophe, and other significant cases so that it may be signed. CSHOs are encouraged to produce a written statement for correction and signature as soon as possible, identifying the transcriber. (See the FOM).
5. Original videotapes and audio-tapes shall not be edited. To prevent any accidental erasing of the original tape during copying, the copy protect tab on the original cassette should be set before any copying is done. Note however, in the case of a VHS videotape, if the copy protect tab is broken off, that videotape will not be able to be reused. (See section J.2.c. of this directive for FOIA considerations.)
6. Labeling of inspection video and audio cassettes generally shall use the following guidelines:
 - a. As needed, each Field Office shall implement a procedure to properly identify, file, track, locate, and retrieve all inspection video and audio cassettes
 - b. An entry in the case file diary shall note the existence of a video or an audio cassette associated with the inspection as well as the location of the cassette, if the location is not the case file.
 - c. CSHO's are to place negatives in a 5" x 7½" manila envelope marked with the inspection number, the CSHO ID and Report Number, with the word "**NEGATIVES**" printed in bold letters.
 - d. CSHO's are to place videotapes to be used in contested cases in a 7½" x 10½" manila envelope marked with the inspection number, the CSHO ID and Report Number, with the word "**VIDEOTAPE**" printed in bold letters.

J. Releasibility

Releasibility of such videotapes, photographs and/or audiotapes produced during a VOSH inspection are another form of evidentiary record and will be subject to all applicable disclosure requirements.

1. VOSH may be required by a court to allow the employer or others to see and hear portions of a videotape and/or audiotape.
2. FOIA. Videotapes and audiotapes taken by a CSHO during an inspection are records under FOIA; therefore, VOSH may be required to disclose some information on videotapes and/or audiotapes.
 - a. Custodian. The VOSH Field Office, as custodian, will always keep custody of the original videotapes and audiotapes. If it becomes necessary to send any tape to the Central Office, only a copy of the tape shall be sent.
 - b. Cost. When an FOIA request is received for a file containing a videotape or an audiotape, the requester shall be informed by the Office of Program Evaluation and Technical Support that parts of the tape may be nondisclosable and the estimated cost of producing a "sanitized" (edited for disclosure purposes) tape will be passed on to the requester.

NOTE #1: Find out if the requester is willing to bear the duplication costs, which include direct costs and may also include a charge for time expended by agency personnel to review and edit the tape for release.

NOTE #2: The requesters may be advised that they may submit their own videotape to minimize cost. If a requester chooses to submit a videotape, it must be new and the seal unbroken.

- c. FOIA editing procedures shall be in accordance with the Office of Program Evaluation and Technical Support FOIA process and procedures.

K. Confidentiality

Confidentiality of videotapes and audiotapes must receive the same treatment with regard to the protection of trade secrets, private financial information, and other confidential commercial information as photographs and other records. Provision for the confidentiality of trade secrets is set forth in Section 15 of the OSH Act. (Also, see the FOM and ARM) Directors, supervisors, and CSHOs must adhere to the following:

1. Ensure that any video cassette or audio cassette that contains confidential information, which the employer has identified as such, is properly labeled and the videotape or the audiotape footage is distinctly identified to assist in the FOIA exemption editing.
2. Ensure that any videotape or audiotape footage that may contain trade secrets or other confidential business information is not released without appropriate clearances with or without reference to the FOIA.
3. After the citation has become a final order, audiotapes and videotapes may be used for VOSH training purposes in the private and public sector, if express written permission has been obtained from the employer and from any person (other than a CSHO), whose voice or picture has been recorded and would be identifiable. In addition, appropriate editing shall be done to protect the confidentiality of employees if required.

NOTE: The original audiotapes and videotapes must still be retained for the appropriate disposition period.

L. Storage, Disposition, Security, and Reuse.

1. Video and audio tapes are not to be exposed to excessive heat or cold, or brought within the vicinity of a strong magnetic field.
2. Security of videotapes and/or audiotapes shall be maintained in the same manner as that of paper files with appropriate labeling to forestall release of confidential information.
3. Audiotapes and videotapes may be reused only if no citation was issued and the statute of limitations for issuance has passed, or after the file's retention period has expired (including any FOIA retention requirements).

NOTE : If tapes are to be reused, they shall be erased completely before reuse to ensure that the integrity of the video and the audio records are not violated.

Appendix A

Sample Label Checklist for Video Camera

1. Equipment Abatement Information & Time
2. Location Employer Knowledge
3. Measurements Additional Information
4. Exposed Employees - Injuries
5. Frequency - Near Misses
6. Duration of Exposure - Miscellaneous

Theron J. Bell

Commissioner

Hard Copy Attachments: Copy of manila envelope 5" x 7½" marked and designated

Copy of manila envelope 7½" x 10½" marked and designated

Distribution: Commissioner of Labor and Industry
Directors and Supervisors
Consultation Services Staff
Training Staff
OSHA Regional Administrator, Region III